

CHAPTER 29

DEBT COLLECTION REQUIREMENTS2901 COLLECTION ACTIVITY

290101. Timely and Aggressive Collection Action. DoD Components will take timely and aggressive collection action with effective follow-up to collect all claims for money or property due their activities. When necessary to protect the DoD Component's interests, for example, to prevent the 6-year statute of limitations from expiring, written demands for payment will be preceded by any other appropriate collection actions specified by this Regulation. This may include immediate referral to the Department of Justice for litigation. When reply to a debtor's correspondence is appropriate, the reply will be made promptly, normally not later than 30 days from receipt of the debtor's communication. When it becomes necessary to extend the 30-day demand letter interval (see paragraph 290103 of this chapter), DoD Components will give due regard to the need to act promptly so, as a rule, if it becomes necessary to refer debts to the Department of Justice for litigation, referrals can be made within 1 year of the date the fact and amount of debts are confirmed.

290102. Written Demands for Debt Payment. Demands for debt payment (including follow-up demands) will be made in writing. When a debtor is given time limits to reply to creditor organization correspondence, 15 additional days will be allowed if correspondence must go through non-United States mail systems. Notification of routine pay adjustments will be made according to the policies in Volumes 7 and 8 of this Regulation, as appropriate.

290103. Initial Demand Letter. After the facts and amounts of debts are confirmed, creditor organizations will promptly deliver to the debtor a written demand for debt payment. Initial demand letters will be dated and mailed or hand-delivered to allow 30 days for the debtor to reply before interest is assessed and debts are considered delinquent. If a creditor organization uses advance billing (that is, mails a bill before a debt is actually owed), it can include the required interest notification but interest will not accrue

until the debt is actually owed. Initial demand letters will, when applicable:

A. Inform the debtor that the DoD Component intends to take salary or administrative offset.

B. Require full debt payment within the time specified in the demand letter.

C. Require the debtor to furnish with the initial reply, evidence to support any dispute of facts and amounts of the debt if the debtor requests a creditor organization to reconsider the debt.

D. Advise the debtor of debt basis.

E. Advise the debtor of the legal requirement for assessing interest, penalties, and administrative charges.

F. Advise the debtor of the legal requirement to refer the delinquent debt to the Department of Justice and commercial credit bureaus.

G. Advise the debtor of the intention to refer the delinquent debt to private collection agencies.

H. Advise the debtor of the creditor organization's willingness to review the debtor's financial statements and proposals for repayment agreements. However, the debtor will be advised that such reviews by themselves will not stay assessment and later collection of interest, penalties, and administrative charges.

I. If a debtor's salary will be involuntarily offset, provide due process notifications required by paragraph ? in chapter 30 of this Volume.

J. Advise the debtor of entitlement to waiver or remission consideration (applicable when mandatory statutory authority exists).

290104. Follow-Up Demand Letters. The debtor shall respond to initial demand letter with full payment, or agree to repayment schedule within the time specified in initial demand letter. If the debtor does not respond to the initial demand for payment, when applicable, at least two more progressively stronger demand letters, at not more than 30-day intervals (45 days if correspondence must go through non-United States mail systems), will be sent unless the debtor's response to either the first or second demand indicates further demands would be futile. See paragraph ?0 in chapter 30 of this Volume.

290105. Lump-Sum Collections. Debts owed the DoD Component along with interest, penalty, and administrative charges will be collected in lump-sum except when otherwise provided by law. This is true whether a debt is being collected by salary or administrative offset or any other method including voluntary payment. Lump-sum collections by offset from current salary, unless voluntary, cannot exceed the offset percentages specified by paragraph ? in chapter 30 of this Volume.

2902 INSTALLMENT COLLECTIONS

290201. Installment Criteria. If debtors represent to the creditor organization that they are financially unable to pay a debt in one lump-sum, payment will be accepted in regular installments. A decision to accept installment payments will be based on a debtor's financial statement submitted under penalty of perjury. Financial statements will become part of the permanent debt record.

290202. Installment Timing and Amount. Installment payments will usually be monthly. Installment payments will bear a reasonable relationship to the size of a debt and the debtor's ability to pay. Except when a debtor can prove financial hardship or another reasonable cause exists, installment payments will be at least \$50 each month and will be sufficient to liquidate debts within 36 months. Installment collections from current salary, unless voluntary, cannot exceed the offset percentages specified by paragraph ? in chapter 30 of this Volume.

290203. Installment Security. Security for debts paid by installment will be accepted in appropri-

ate cases. Creditor organizations will accept installment payments notwithstanding a debtor's refusal to give security.

290204. Installment Payment Agreement. Creditor organizations that agree to accept installment payments will obtain signed, legally enforceable payment agreements from the debtor. The agreement will include a provision accelerating the debt so that the remaining balance is due and payable immediately should the debtor default on the agreement. The debtor will be required to annually submit financial statements, completed under penalty of perjury, during the repayment period whenever installment payments are less than \$50 each month or the repayment period exceeds 36 months.

290205. Installment Application to Multiple Debts. DoD Components accepting installment payments on multiple debts of a debtor will apply payments to the various debts according to the best interests of the DoD and the United States as determined by facts and circumstances of each debt. Careful attention will be paid to applicable statutes of limitations. Debtor designations as to which of multiple debts the payments may be applied against, will be followed. However, the statute of limitations will not be allowed to expire on any debt because of debtor designations.

290206. Installment Application to Penalty and Administrative Charges, Interest, and Debt Principal. Installment payments will be applied first to accrued administrative and penalty charges; second to accrued interest; and third to debt principal balance.

290207. Installment Payment Review. Creditor organizations collecting debts by installment will review the debtor's annual financial statements and determine whether to collect the balance due in a lump-sum or continue installment payments at the same or increased amounts. Smaller installment payments will be accepted on request of a debtor in exceptional cases fully supported by financial statements confirming inability to pay agreed to installment payments. Installment payments will not be reduced if a debtor could have controlled the financial condition which reduced ability to meet existing installment payments.

2903 INTEREST, PENALTY, AND ADMINISTRATIVE CHARGES

290301. Interest Charges. The intent of interest is to stimulate prompt payment of debts and to recover the cost of Treasury borrowing necessitated by delinquent debts. Creditor organizations will accrue, assess, and collect interest on all debts. Unless otherwise provided in this section, interest will accrue from the date the debt notice and interest requirements are hand-delivered to a debtor or mailed to a debtor using the most current address available to the DoD Component. Once accrued and assessed, interest will be collected unless collection action is foregone under a provision of this Regulation.

290302. Interest Rate. Creditor organizations will assess an interest rate which is equal to the current value of funds to the United States Treasury as prescribed by the Secretary of the Treasury in the Federal Register and Treasury Financial Manual bulletins quarterly or annually. A different rate will be assessed if a statute or regulation explicitly fixes the rate of interest for that particular type of debt. An initial interest rate will remain fixed for the duration of that debt. However, if a debtor defaults on an interest bearing installment-payment agreement, the creditor organization will set an interest rate for any new installment payment agreement that reflects the current rate of interest established by the Treasury. The interest rate for a new installment payment agreement will reflect the current value of funds and may be higher or lower than the interest rate charged in the original payment agreement.

290303. Interest Computation. Interest charges will be computed using the formula: $I = DNF$. Where: I = interest charge; D = debt principal balance; N = number of days in computation period; F = interest rate per day (365- or 366-day year).

290304. Interest Compounding. Generally, interest will not be assessed on interest, penalties, or administrative charges. However, if a debtor defaults on an installment-payment agreement interest, penalty, and administrative charges assessed until the time of default, but not collected, will be added to the outstanding debt principal and will be collected along with interest under any new payment agreement.

Also, interest may be compounded if authorized by a regulation or statute.

290305. Penalty Charges. Creditor organizations will assess a penalty charge of 6 percent per annum on any debt principal delinquent more than 90 days. Penalty charges will accrue from the date the principal amount became delinquent.

290306. Administrative Charges. Creditor organizations will assess administrative charges against the debtor to cover the additional administrative costs incurred in processing and handling the debt because it became delinquent. Administrative charges will be based on the actual costs incurred and will include costs of obtaining credit reports and using private collection agencies to the extent these costs are attributable to collecting delinquent debts. When actual costs are not available, administrative costs will be based on cost analyses establishing an average of actual costs incurred in processing and handling claims against other debtors in similar stages of delinquency.

290307. Decisions Not to Accrue or Assess Interest, Penalty, and Administrative Charges

A. DFAS policy is to accrue and assess these charges on all debts owed DoD Components, excluding routine pay adjustments. However, 31 U.S.C. 3717 (reference (o)) and the Federal Claims Collection Standards (4 CFR Parts 101 through 105) (reference (bb)) authorize issuance of regulations governing application of these charges. Decisions not to accrue or assess these charges can be made by the creditor organization on a case-by-case basis according to the following criteria:

1. When a debt is subject to permissive waiver or remission statutes and collection action is suspended pending outcome of the waiver or remission, these charges will not accrue or be assessed while the waiver or remission request is being considered and finalized.

- a. Charges accrued before receipt of a waiver or remission request will not be assessed if the request is received by the designated official within 30 days of hand delivery or mailing of the debt notice to the debtor. Extend the 30-day period to 45 days if the debt

notice goes through non-United States mail systems or is sent to an APO/FPO address.

b. These charges will not accrue or be assessed on any part of a debt principal balance that is waived or remitted.

c. Charges will again begin to accrue on any portion of the debt principal not waived or remitted from the date the debtor is formally notified in person or by mail of the final waiver or remission determination.

2. When a debtor entitled to a hearing petitions the creditor organization for a hearing, these charges will not accrue from the date the petition is received by the creditor organization until the date the debtor is formally notified in person or by mail of the hearing decision. Charges that accrued before the creditor organization received a petition for a hearing will be assessed on that portion of the debt principal upheld by the decision of the hearing official.

3. When a debtor is entitled to and has petitioned for a hearing, these charges will not accrue or be assessed while a debt is being reconsidered.

4. When debts are routine pay adjustments, these charges will not accrue or be assessed.

5. When the debt of an individual arose under the tariff laws of the United States, the Social Security Act, or the Internal Revenue Code of 1954, these charges will not accrue or be assessed.

6. When a DoD Component is requested to collect a debt by another DoD Component or federal agency, these charges will not accrue or be assessed by the Component accomplishing the collection. Note that the creditor Component or agency requesting collection assistance has authority to accrue and assess applicable late payment charges and these charges should be included in the total amount identified for collection.

7. When an applicable statute or regulation prohibits application of these charges

to the debt involved, these charges will not accrue or be assessed.

8. When these charges would not be in the best interest of the Government, would cause extreme hardship, or if facts and circumstances indicate that charges accrued would not be collected per paragraph 290308 of this chapter, they will not be assessed.

B. Blanket decisions to not accrue or assess these charges are not authorized. Documentation shall support every decision not to accrue or assess these charges. If there is documentation in the official debt file or associated with the debt transaction that clearly supports and explains the reason(s) for the decision not to accrue or assess these charges, no further documentation is required. Exception: See requirements for paragraph 290307.A.8 above.

290308. Decisions Not to Collect Interest, Penalty, and Administrative Charges. Once accrued and assessed, these charges will normally be collected. However, a decision not to collect these charges can be made on a case-by-case basis.

A. General. The dollar limits imposed by regulation on various echelons for write off of debt principal also determines the authority for making the decision not to collect these charges. The decision not to collect shall be documented and retained in the official debt file. Blanket decisions not to collect interest, penalty, or administrative charges are not authorized.

B. Mandatory Grace Period. Interest will not be collected on a debt or on any part of a debt paid within 30 days after the date interest began to accrue. The 30-day period can be extended for an additional 30 days on a case-by-case basis. Document and retain in the official debt file the reason(s) for any extension.

C. Criteria for Not Collecting. Decisions not to collect these charges can be made on a case-by-case basis when the following general standard for not collecting and any one of the appropriate circumstances or standards are present.

1. General Standard. Collection of these charges would be against equity and good conscience or not in the best interest of the Government.

2. Appropriate Circumstances and Standards

a. These charges accrued and were assessed on a debt principal balance that was incurred through no fault or lack of good faith on the part of the debtor.

b. Financial inability of the debtor to pay the accrued and assessed charges within a reasonable period of time.

c. The underlying debt principal balance was waived or remitted by the appropriate authority or other administrative review process such as, hearing or reconsideration determined that it was not valid.

d. Reasonable doubt exists concerning the Government's ability to prove that charges are owed because of the issues involved or a bona fide dispute as to facts.

e. The amount of charges that could be collected is less than the cost of collection.

f. Reasonable efforts to locate the debtor have been unsuccessful.

g. Collection would have an adverse effect on the diplomatic relations between a debtor nation and the United States which would impair the ability of the DoD to conduct its mission from installations located within the debtor nation.

2904 DEBT RECONSIDERATION

290401. Debts Which Will Be Reconsidered. Creditor organizations will reconsider debt validity and amount and the appropriateness of involuntary offset schedules upon timely receipt of a debtor's request. Debts, for which the debtor is entitled to and has petitioned for a hearing under this Regulation, will also be reconsidered. However, hearing procedures shall be complied with unless the debtor waives hearing or administrative hearing rights.

290402. Providing Debtors With Debt Records. Creditor organizations will provide the debtor with copies of records relating to the debt when requested. Records will be provided at debtor's expense. Fee charges will be determined on an individual basis according to the appropriate fee schedule.

290403. Effect on Interest, Penalty, and Administrative Charges. Neither debt reconsideration nor requests for records by themselves will stay debt collection proceedings including accrual of interest, penalty, or administrative charges.

290404. Document Support. Debtors who request reconsideration of salary offset schedules established other than by agreement with the debtors, will explain why they believe the offset schedule will cause undue financial hardship. These debtors will submit proposed alternative offset schedules and the financial statements specified by paragraph ? in chapter 30 of this Volume. Debtors who request reconsideration of debt validity or amount will submit documents and statements, if required, to support their positions.

290405. Written Decisions. Creditor organizations reconsidering debts will provide debtors with written decisions as follows:

A. If, after considering a debtor's statements and documentation, the debt is valid and the amount is partially or fully reaffirmed:

1. A statement of the reasons for reaffirming the debt, including, if applicable, reasons for adjusting the amount.

2. If a debtor is not entitled to or has not petitioned for a hearing or administrative hearing, notice of the collection actions that will be taken if full payment is not received within 30 days.

B. After considering a debtor's statements and documentation contesting an offset schedule, provide the debtor with: a statement that the alternate offset schedule proposed by the debtor has been accepted; or, a statement that the offset schedule established by the creditor organization does not impose undue financial hardship. If the debtor is not entitled to or did not petition for a hearing or administrative

hearing, provide notice that offset will begin the next established pay period if full payment is not received before pay deductions are initiated.

C. If a reconsideration so warrants, notify a debtor that the debt was invalid.